

Application Number 10/817,610  
Responsive to Office Action mailed February 5, 2007

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### REMARKS

This amendment is responsive to the Final Office Action dated February 5, 2007. Applicant has amended claims 1, 10 and 25. Claims 1-12, 14-23, 25 and 27 are pending.

Applicant respectfully requests the Examiner enter the amendments to the claims because the amendments merely adopt examiner suggestions in the Final Office Action.<sup>1</sup>

#### Claim Rejection Under 35 U.S.C. § 112

In the Final Office Action, the Examiner rejected claims 1-12 and 25 under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements. Applicant has amended claims 1, 10 and 25 in accordance with the Examiner's suggestions for purposes of clarification. Applicant submits that the claims, as amended, clearly include all essential elements of Applicant's invention.

Applicant requests withdrawal of all rejections under 35 U.S.C. 112, second paragraph.

#### Claim Rejection Under 35 U.S.C. § 103

In the Final Office Action, the Examiner rejected claims 1, 2, 4-7, 10-12, 14-16, 18-20 and 22 under 35 U.S.C. 103(a) as being unpatentable over Docy (US 6,298,712) in view of Wickham (US 3,948,083). The Examiner also rejected claims 8, 9 and 17 under 35 U.S.C. 103(a) as being unpatentable over Docy in view of Wickham as applied to claims 1 and 16, further in view of Lindeberg (US 3,818,752) and rejected claims 3 and 21 under 35 U.S.C. 103(a) as being unpatentable over Docy in view of as applied to claim 2 and 20, further in view of Ledeen (US 5,708,193). The Examiner rejected claims 23, 25 and 27 under 35 U.S.C. 103(a) as being unpatentable over Docy in view of Wickham as applied to claim 14, further in view of Macpherson (US2005/0036232).

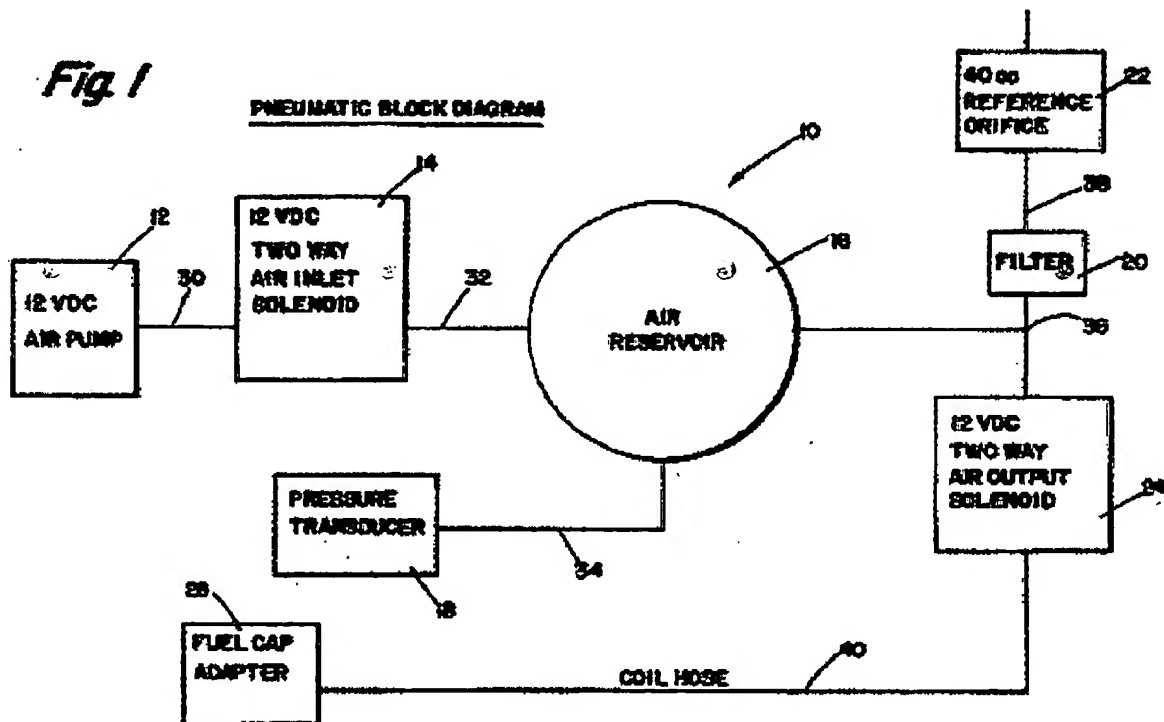
Applicant respectfully traverses the rejection. The applied references fail to disclose or suggest the inventions defined by Applicant's claims, and provide no teaching that would have suggested the desirability of modification to arrive at the claimed invention.

<sup>1</sup> Final Office Action, page 2; *see also* MPEP 714.13 (I).

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With reference to independent claims 1, 14 and 25, for example, the Examiner acknowledged that Docy does not disclose a flow meter in the flow path of the flow of the pressurized fluid, but stated that Wickham teaches the equivalence of in-line flow meters to the pressure transducer of the Docy. However, replacing the pressure sensor in Docy would not result in the Applicant's invention as recited by claims 1, 14 and 25. For reference, FIG. 1 of Docy is reproduced below.



As shown above, pressure transducer 18 is located in tubing 34, which is not equivalent to the flow paths specified in Applicant's claims. Replacing pressure transducer 18 with an in-line flow meter would not result in measurement of a flow including a first portion that is conducted by a conduit to a DUT and a second portion that is removed from the conduit by a bleed orifice. Instead, it would result in a measurement of a flow in tubing 34. Clearly, this flow is not equivalent to the flow as specified in Applicant's claims.

In response to the above argument, the Examiner characterized Wickham as teaching the use of a flow meter that is placed relative to two orifices such that the meter subtracts the bleed orifice selected removal rate from the determined flow rate through the test device to provide a

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leak rate for the device.<sup>2</sup> However, the Examiner's characterization of Wickham is clearly erroneous.

For example, the passage of Wickham cited by the Examiner, column 5, lines 1-20, fails to discuss a flow meter and instead teaches a pressure utilization device having a closed chamber: gauge 47.<sup>3</sup>

As other examples, Wickham does not teach a selected removal rate or a meter that subtracts the bleed orifice selected removal rate from the determined flow rate. Gauge 47 is used to measure a flow rate from port 13, which can be used to indicate a flow rate in conduit 5.<sup>4</sup> Neither the flow rate from port 13, nor the flow rate in conduit 5, are equivalent to a selected removal rate as claimed because they are not selected. Also, because the flow rate in conduit 5 is not separately measured from the flow rate from port 13, Wickham does not teach a meter that subtracts the bleed orifice selected removal rate from the determined flow rate.

For at least these reasons, Wickham does not teach the use of a flow meter that is placed relative to two orifices such that the meter subtracts the bleed orifice selected removal rate from the determined flow rate through the test device to provide a leak rate for the device as stated by the Examiner in the Final Office Action. If the Examiner maintains the rejection, Applicant respectfully requests the Examiner clarify his statement regarding Wickham, column 5, lines 1-20.

Claims 2-12, 15-23 and 27 are allowable over Docy in view of Wickham for at least the reasons independent claims 1 and 14 are allowable as stated herein. Furthermore, claims 2-12, 15-23 and 27 include additional features not suggested or made obvious by the cited prior art.

For example, with respect to claims 8 and 17, the Examiner cited Lindeberg as teaching the use of flow meters based upon the desired flow rates to be sensed. The Examiner also stated that, "applicant's specification further mentions that some flow meters 'have been found to be generally more accurate in the mid-range' . . . This appears to indicate that one having ordinary skill in the art would be familiar with the advantages of mid-range operation." Applicant strongly disagrees with this characterization as the Examiner is clearly using the Applicant's own disclosure in support of the rejection, which constitutes impermissible

<sup>2</sup> Final Office Action, page 7.

<sup>3</sup> Wickham, column 5, lines 1-20 and column 4, lines 28-31.

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**hindsight.** The Examiner failed to respond to this point, which Applicant also made in the response dated December 20, 2006. Instead, the Examiner has again relied upon Applicant's own disclosure as the sole support for the feature of a mid-range value as recited in claims 8 and 17.<sup>5</sup>

Furthermore, to the extent that the term "mid-range" is not defined with any precision in the specification, the Examiner should interpret it according to its ordinary meaning. Instead, the rejection supposes that the term, "mid-range" is equivalent to "operational range", which is inconsistent with the ordinary meaning of the term mid-range.

The Examiner further cited *In re Aller*,<sup>6</sup> as holding that, "where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art." However, the Examiner's citation of *In re Aller* is inconsistent with the holding in *In re Antonie*,<sup>7</sup> which requires that a particular parameter must first be recognized as a result-effective variable. Because a value of a flow rate has not been determined to be a result effective variable regarding the accuracy of a measurement of the flow rate outside of Applicant's specification, the holding of *In re Aller* cited by the Examiner is not applicable to the rejection of claims 8 and 17.

In this regard, the Examiner has failed to establish a prima facie case for non-patentability of Applicant's claims 8 and 17 under 35 U.S.C. 103(a).

For at least these reasons, the Examiner has failed to establish a prima facie case for non-patentability of Applicant's claims 1-12, 14-23, 25 and 27 under 35 U.S.C. 103(a). Withdrawal of this rejection is requested.

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<sup>4</sup> Wickham, column 5, lines 1-20 and column 4, lines 23-34.

<sup>5</sup> Final Office Action, page 8.

<sup>6</sup> 220 F.2d 454, 105 USPQ 233.

<sup>7</sup> 559 F.2d 618, 195 USPQ 6; *see* MPEP 2144.05.

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### CONCLUSION

All claims in this application are in condition for allowance. Applicant respectfully requests reconsideration and prompt allowance of all pending claims. Applicant does not acquiesce with any of the Examiner's current rejections or characterizations of the prior art, and reserves the right to further address such rejections and/or characterizations.

Please charge any additional fees or credit any overpayment to deposit account number 50-1778.

The Examiner is invited to telephone the below-signed attorney to discuss this application.

Date:

By:

March 21, 2007

SHUMAKER & SIEFFERT, P.A.  
8425 Seasons Parkway, Suite 105  
St. Paul, Minnesota 55125  
Telephone: 651.735.1100  
Facsimile: 651.735.1102



Name: Daniel T. Lund  
Reg. No.: 58,614